

**UNITED STATES DISTRICT COURT**  
**FOR THE SOUTHERN DISTRICT OF TEXAS**  
**HOUSTON DIVISION**

**CHERYLL CLEWETT, on behalf of herself  
and all others similarly situated,  
Plaintiff,**

**VS.**

**ALKA MIST PREMIER INC.,  
Defendant.**

§ Civil Case No.: 4:21-CV-2137

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§ ANSWER-CLASS ACTION

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**DEFENDANT ALKA MIST INC.'S**  
**AMENDED ANSWER TO**  
**PLAINTIFF CHERYLL CLEWETT (AND OTHER PERSONS**  
**SIMILARLY SITUATED)'S ORIGINAL COMPLAINT AND JURY**  
**DEMAND**

**TO THE HONORABLE JUDGE OF THE COURT:**

**NOW COMES** Defendant ALKA MIST INC. who files its Amended Answer to Plaintiff's Original Complaint and Jury Demand as follows:

**AMENDED ANSWER**

The responses below correspond on a paragraph-by-paragraph basis with the allegations in Plaintiff's Original Complaint and Jury Demand.

**INTRODUCTION**

1. The allegations in this paragraph are denied. The Defendant has never made an autodialed call.
2. Defendant does not have sufficient information to admit or deny the allegation in this paragraph.
3. Defendant does not have sufficient information to admit or deny the allegation in this paragraph.

### **JURISDICTION AND VENUE**

4. Defendant admits that jurisdiction over the type of claims Plaintiff alleges would be based on 28 U.S.C. §1331. Defendant denies it violated any statute or committed any actionable wrong against this Plaintiff or any other party in this suit.
5. Defendant admits this Court has supplemental jurisdiction over state law claims under 28U.S.C. Section 1367(a).
6. Defendant admits it is headquartered in this District but denies the rest of the paragraph.
7. Defendant denies the allegations in this paragraph.

### **PARTIES**

8. Defendant does not have sufficient information to admit or deny the allegations in this paragraph.
9. Defendant does not have sufficient information to admit or deny the allegations in this paragraph.
10. Defendant does not have sufficient information to admit or deny the allegations in this paragraph.
11. Defendant does not have sufficient information to admit or deny the allegations in this paragraph.
12. Defendant admits the allegations in this paragraph.
13. Defendant admits the allegations in this paragraph.
14. Defendant admits the allegation in this paragraph.
15. Defendant does not have sufficient information to admit or deny the allegations in this paragraph.

### **GENERAL FACTUAL ALLEGATIONS**

16. Defendant denies the allegations in this paragraph. Defendant has never made prerecorded calls to the Plaintiff or anyone else in this suit.
17. Defendant denies the allegations in this paragraph. Defendant is not associated with the phone number 346-220-4674 or has Defendant ever owned the said phone number.

18. Defendant denies the allegations in this paragraph.
19. Defendant denies the allegations in this paragraph. Defendant does not own “Pure Water” nor is Defendant associated with “Pure Water”.
20. Defendant denies the allegations in this paragraph.
21. Defendant denies the allegations in this paragraph. Defendant does not own “Pure Water” nor is Defendant associated with “Pure Water”.
22. Defendant denies the allegations in this paragraph.
23. Defendant denies the allegations in this paragraph.

**PLAINTIFF CLEWETT’S FACTUAL  
ALLEGATIONS**

24. Defendant does not have sufficient information to admit or deny the allegations in this paragraph.
25. Defendant denies the allegations in this paragraph. Defendant did not call the Plaintiff on May 31, 2021, or any day at all.
26. Defendant denies the allegations in this paragraph. Defendant does not own or operate the phone number mentioned in this paragraph.
27. Defendant does not have sufficient information to admit or deny the allegations in this paragraph.
28. Defendant denies the allegations in this paragraph. Erica does not work for Defendant and Defendant has never associated with Erica.
29. Defendant denies the allegations in this paragraph.
30. Defendant denies the allegations in this paragraph. Defendant has always been known as Alka Mist Premier Inc.
31. Defendant denies the allegations in this paragraph.

**DEFENDANT’S LIABILITY**

32. Defendant does not have sufficient information to admit or deny the allegations in this paragraph.
33. Defendant admits the wordings of the statute but denies its applicability to the Defendant.

34. Defendant does not have sufficient information to admit or deny the allegations in this paragraph.
35. Defendant denies the allegations in this paragraph.
36. Defendant admits the allegations in this paragraph. The allegation is this complaint shows there was only one call.
37. Defendant admits the statement of law contained in this paragraph but denies the rest of the paragraph.
38. Defendant admits the statement of law in this paragraph but denies the rest of the paragraph.
39. Defendant denies the allegation in this paragraph.
40. Defendant denies the allegations in this paragraph.
41. Defendant admits the allegations in this paragraph.
42. Defendant admits the allegation in this paragraph.
43. Defendant denies the allegation in this paragraph.
44. Defendant denies the allegation in this paragraph.
45. Defendant denies the allegations in this paragraph.
46. Defendant denies the allegations in this paragraph (inclusive of the allegations in each of the bullet points).
47. Defendant does not have sufficient information to admit or deny the allegations in this paragraph.

**CLASS ACTION**  
**ALLEGATIONS**

48. Defendant does not have sufficient information to admit or deny the allegations in this paragraph. Defendant was not formed until 2019.
49. Defendant does not have sufficient information to admit or deny the allegations in this paragraph.
50. Defendant does not have sufficient information to admit or deny the allegations in this paragraph.
51. Defendant denies the allegations in this paragraph (inclusive of sub-paragraphs).
52. Defendant does not have sufficient information to admit or deny the allegations in this

paragraph.

- 53. Defendant denies the allegations in this paragraph (inclusive of sub-paragraphs).
- 54. Defendant denies the allegations in this paragraph.
- 55. Defendant denies the allegations in this paragraph.
- 56. Defendant denies the allegations in this paragraph.
- 57. Defendant does not have sufficient information to admit or deny the allegations in this paragraph.
- 58. Defendant denies the allegations in this paragraph.
- 59. Defendant denies the allegations in this paragraph.
- 60. Defendant denies the allegations in this paragraph.
- 61. Defendant denies the allegations in this paragraph.
- 62. Defendant denies the allegations in this paragraph.

#### **FIRST CAUSE OF ACTION**

##### **Violations of the TCPA, 47 U.S.C**

##### **§227(b)(On Behalf of Plaintiff and the TCPA 227(b) Class)**

- 63. Defendant does not have sufficient information to admit or deny the allegations in this paragraph.
- 64. Defendant denies the allegations in this paragraph.
- 65. Defendant denies the allegations in this paragraph.
- 66. Defendant denies the allegations in this paragraph.
- 67. Defendant denies the allegations in this paragraph.

#### **SECOND CAUSE OF ACTION**

##### **Violations of Texas §302.101 Class**

##### **(On Behalf of Plaintiff and the Texas §302.101 Class)**

- 68. Defendant does not have sufficient information to admit or deny the allegations in this paragraph.
- 69. Defendant denies the allegations in this paragraph.

70. Defendant denies the allegations in this paragraph.

71. Defendant denies the allegations in this paragraph.

72. Defendant denies the allegations in this paragraph.

### **THIRD CAUSE OF ACTION**

#### **Violations of Texas §305.052 Class**

#### **(On Behalf of Plaintiff and the Texas §305.053 Class)**

73. Defendant does not have sufficient information to admit or deny the allegations in this paragraph.

74. Defendant denies the allegations in this paragraph.

75. Defendant denies the allegations in this paragraph.

76. Defendant denies the allegations in this paragraph (inclusive of all sub-sections)

### **PRAYER**

Wherefore, Defendant prays that this action be dismissed, that Plaintiffs take nothing, and That Defendant be granted such other relief to which it may be justly entitled.

Respectfully submitted,

THE OPANDE LAW FIRM, PC

By: /s/ Laban Opande

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Attorney for Defendant

## CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of Defendant's Amended Answer was forwarded to Plaintiff's counsel of record in this cause via the Clerk's ECF System on the 30<sup>th</sup> day of July 2021.

*Via the Court's ECF System*

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*Via the Court's ECF System*

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*/s/ Laban Opande*

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Laban Opande